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14 December 2023

Public Consultation on the implementation of the Sustainable Finance Disclosures Regulation

Dear Madam,
Dear Sir,

As association of German listed and capital markets-oriented companies, Deutsches Aktieninstitut represents almost 90 percent of the DAX-market capitalization. We welcome the evaluation of the Sustainable Finance Disclosures Regulation (SFDR) to assess potential shortcomings. Legal certainty and the usability of the regulation are key parameters not only for the financial services sector addressed by the SFDR in the first place, but also for non-financial undertakings indirectly affected. In the following, we would like to highlight some issues of the Public Consultation that from our perspective should be addressed in the SFDR revision process.

The SFDR, the Taxonomy Regulation and the Corporate Sustainability Reporting Directive (CSRD) with the European Sustainability Reporting Standards (ESRS) constitute a completely new and highly complex ESG regulatory ecosystem, which must be kept in balance. The Commission should as best as possible align the SFDR on the one hand with the Taxonomy, CSRD and ESRS on the other. Especially the following issues should be solved:

- Companies obliged to report according to the recently finalized ESRS have to deal with and report on up to 1100 data points. The ESRS reflect the view of the European legislator what kind of sustainability information is needed. With reference to the SFDR, this means that the regulation should be adjusted to ensure that all information, which banks and investors are required to report under the SFDR can be generated from the sustainability information disclosed by companies in accordance with the CSRD/ESRS and the Taxonomy.

- A balanced regulatory ecosystem also entails that the materiality assessment performed by companies with regard to their ESRS reporting is respected and not undermined by banks and investors because they are obliged by the SFRD to estimate data not delivered by companies.

- As stated in the public consultation, the SFDR and the Taxonomy Regulation introduce definitions of "sustainable investment" (SFDR) and "environmentally sustainable economic activities" (taxonomy). The differences between the two definitions create practical challenges for market participants, which must be solved. Although the European Commission adopted a FAQ in June 2023 clarifying that investments in taxonomy-aligned "environmentally sustainable" economic activities can automatically qualify as "sustainable investments" in those activities under the SFDR, the FAQ does not provide sufficient clarity to market participants. Therefore, we urge that this is clarified also on Level 1 Legislation.

- The Do no significant harm (DNSH) principle of the SFDR should be based on the same understanding as the DNSH principle of the Taxonomy Regulation.

- The materiality assessment of the sustainability information enshrined in the CSRD should also be applied to the Principles of Adverse Impacts (PAIs) of the SFDR. The PAI Indicators in the SFDR should be based on the ESRS. No further information must be required to derive the PAI.

- In addition, we propose the European Commission to set up a working group of banks, investors and companies. The working group should analyze which of the data reported as part of the ESRS is really relevant for the investment decisions of banks and investors. The data currently reported appears to be too granular for investment decisions.

We would much appreciate if you considered our comments in the SFDR revision process, remain at your disposal for any questions and would be grateful to explain our position to you in greater detail also in a personal encounter with practitioners from our corporate members upon your convenience.

Yours faithfully

Uta-Bettina v. Altenbockum

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